United Nations A/65/284

General Assembly

Distr.: General
11 August 2010

Original: English

Sixty-fifth session
Item 69 (c) of the provisional agenda*
Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives

Promotion and protection of the right to freedom of opinion and expression

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, submitted in accordance with Human Rights Council resolution 12/16.

* A/65/150.

10-48285 (E) 080910

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Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Summary

The present report, submitted in accordance with Human Rights Council resolution 12/16, is the first report to the General Assembly of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. Sections I and II of the report contain an overview of the activities undertaken by the Special Rapporteur, including communications sent, participation in meetings and seminars, and country visits undertaken and requested. Section III examines trends regarding violence against journalists worldwide and the obligation of States under international human rights law to guarantee their protection. Section IV explores trends regarding violence against journalists in situations of armed conflict and the protection afforded to them under international humanitarian law, in addition to international human rights law. Section V sheds light on difficulties faced by "citizen journalists" and identifies applicable State obligations to ensure their protection. The report concludes with recommendations to enhance the protection of journalists and citizen journalists alike, in both conflict and non-conflict situations.

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I. Introduction

1. The mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression was established by the Commission on Human Rights in its resolution 1993/45. After assuming all of the mandates, mechanisms, functions and responsibilities of the Commission on Human Rights, the Human Rights Council decided by its resolution 7/36 of 28 March 2008, to extend the mandate of the Special Rapporteur for a further three years. The Human Rights Council, in its resolution 12/16, requested the Special Rapporteur to submit an annual report to the General Assembly, as well as to the Human Rights Council, on activities relating to his mandate.

2. In accordance with Human Rights Council resolution 7/36, the Special Rapporteur is mandated to gather all relevant information, wherever it may occur, relating to violations of the right to freedom of opinion and expression, discrimination against, threats or use of violence, harassment, persecution or intimidation directed at persons seeking to exercise or to promote the exercise of the right to freedom of opinion and expression, including, as a matter of high priority, against journalists or other professionals in the field of information, and to make recommendations on ways and means to better promote and protect the right to freedom of opinion and expression.

3. Accordingly, the Special Rapporteur has devoted a section of his annual report to the Human Rights Council to the issue of the protection of journalists and other media professionals; the previous mandate holder also addressed this issue in his annual reports, beginning 2005.[1] As the present report is the first such report to be submitted to the General Assembly, the Special Rapporteur would like to bring to the attention of all Member States the recent trend of violence against journalists, media professionals and associated personnel, and the obligation of States to protect them. Section III will examine the trend of violence against journalists in all situations and the obligation of States to protect journalists under international human rights law, while section IV will examine the specific protection needs of journalists in situations of armed conflict and focus on the protection guarantees under international humanitarian law. Section V will explore the trends and applicable State obligations with regard to non-professional journalists, or "citizen journalists".

II. Activities of the Special Rapporteur

A. Communications

4. Since assuming his mandate on 1 August 2008, the current mandate holder has sent 528 communications, 487 of which were sent jointly with other special procedures mandate holders.[2] The geographical distribution of the communications sent was as follows: Asia and the Pacific, 34 per cent; Latin America and the Caribbean, 21 per cent; Africa, 18 per cent; Europe, North America and Central Asia, 14 per cent; and the Middle East and North Africa, 13 per cent.

[1] E/CN.4/2006/55, A/HRC/4/27 and A/HRC/7/14, A/HRC/11/4 and A/HRC/14/23.

[2] As at 3 August 2010.

B. Participation in meetings and seminars

5. The activities carried out by the Special Rapporteur in the period from April to December 2009 were described in his report submitted to the Human Rights Council in April 2010 (A/HRC/14/23). Since that period, the Special Rapporteur has participated in the following meetings and seminars.

6. From 17 to 19 February 2010, the Special Rapporteur participated as a speaker in an event entitled "2010 Human Rights Summit: Affirming Fundamental Freedoms" held in Washington, D.C., organized by Human Rights First and Freedom House.

7. On 30 April 2010, the Special Rapporteur participated in the Australian Press Freedom Media Dinner in Sydney, Australia, organized by the Walkley Foundation. On 2 and 3 May 2010, the Special Rapporteur participated in events organized by the United Nations Educational, Scientific and Cultural Organization (UNESCO) on the occasion of World Press Freedom Day in Brisbane, Australia.

8. On 3 June 2010, the Special Rapporteur presented his annual report to the Human Rights Council (A/HRC/14/23 and Add.1 and 2). In the report, he addressed four main issues: (a) general considerations on the right to freedom of opinion and expression; (b) freedom of expression for groups in need of particular attention and the role of freedom of expression in combating discrimination; (c) permissible restrictions and limitations on the right to freedom of expression; and (d) the protection of journalists and freedom of the press.

9. On 4 June 2010, the Special Rapporteur participated as one of five panellists in the Human Rights Council panel discussion on the protection of journalists in armed conflict.

10. On 16 and 17 June 2010, the Special Rapporteur attended an expert meeting on human rights and the Internet, organized by the Ministry of Foreign Affairs of Sweden, held at Lund University.

11. From 28 June to 2 July 2010, the Special Rapporteur participated in the seventeenth annual meeting of Special Rapporteurs, Representatives, Independent Experts and Chairpersons of Working Groups of the Human Rights Council, organized by the Office of the United Nations High Commissioner for Human Rights in Geneva.

12. From 2 to 4 July 2010, the Special Rapporteur attended the High-level Democracy Meeting on the occasion of the tenth anniversary of the Community of Democracies, organized by the Permanent Secretariat of the Community of Democracies and hosted by the Government of Poland in Krakow.

13. On 8 July 2010, the Special Rapporteur participated in a meeting organized by the Ministry of Foreign and European Affairs of France on the theme "The Internet and freedom of expression", in Paris.

C. Country visits

14. Country visits constitute a central and essential element of the mandate. The Special Rapporteur takes into account various factors when sending a request to Governments to undertake an official visit. Such factors include visits undertaken

and requested by former mandate holders, trends that emerge from an analysis of communications sent by the Special Rapporteur and geographical balance.

Missions undertaken

15. Since the establishment of the mandate in 1993, visits have been undertaken to the following countries: Malawi (1994), Republic of Korea (1995), Islamic Republic of Iran (1996), Turkey (1996), Belarus (1997), Poland (1997), Malaysia (1998), Hungary (1998), Sudan (1999), Ireland (1999), United Kingdom of Great Britain and Northern Ireland (1999), Tunisia (1999), Albania (2000), Argentina (2000), Equatorial Guinea (2002), Islamic Republic of Iran (2003), Italy (2004), Côte d'Ivoire (2004), Colombia (2004), Serbia and Montenegro (2004), Azerbaijan (2007), Ukraine (2007), Honduras (2007), Maldives (2009) and Republic of Korea (2010).

16. Since assuming his mandate in August 2008, the Special Rapporteur has undertaken visits to Maldives (1 to 5 March 2009 (see A/HRC/11/4/Add.3)) and the Republic of Korea (6 to 17 May 2010). The report on the mission to the Republic of Korea will be presented to the Human Rights Council in June 2011.

Upcoming missions

17. From 9 to 24 August 2010, the Special Rapporteur will undertake an official visit to Mexico, together with the Special Rapporteur for freedom of expression of the Organization of American States, Ms. Catalina Botero.

18. The Special Rapporteur would like to thank the Government of Israel for accepting new dates for the mission, which, it has now been agreed, will take place in January 2011.

Pending requests

19. As at August 2010, the following requests from the Special Rapporteur were pending: Italy (requested in 2009 and renewed in 2010); the Islamic Republic of Iran (requested in February 2010); Sri Lanka (requested in June 2009); Tunisia (requested in 2009); and the Bolivarian Republic of Venezuela (requested in 2003 and 2009).

III. Protection of journalists and press freedom

20. The right to freedom of expression is generally recognized as a fundamental right which constitutes one of the essential foundations of a democratic society. Indeed, through the exercise of their right to freedom of expression, or collecting, analysing and disseminating information, and ensuring the public's right to receive information, journalists play a key role as part of the checks and balances in society, and thus contribute to the development and strengthening of democracy.

21. Journalists are understood to be individuals who are dedicated to investigating, analysing and disseminating information, in a regular and specialized manner, through any type of written media, broadcast media (television or radio) or electronic media. With the advent of new forms of communication, journalism has extended into new areas, including citizen journalism (see section V). The Special Rapporteur underscores that journalists should not be subject to conditions such as

compulsory membership in professional associations or a university degree to practise journalism.[3] When reference is made to journalists in the present report, the Special Rapporteur is also alluding by extension to other media professionals and associated personnel, given the fact that they are also often targeted because of their activities in gathering and disseminating information and for being part of "the press".

22. The credibility of the press is linked to its commitment to the truth and to the pursuit of accuracy, fairness and objectivity. Indeed, the Special Rapporteur is of the view that, by voluntarily upholding the highest standards of ethics and professionalism and ensuring their credibility in the eyes of the public, journalists can contribute to enhancing their own protection. In this regard, the Special Rapporteur welcomes various standards that have been developed and adopted by journalists, including the Declaration of Principles on the Conduct of Journalists, and the initiatives undertaken by the International Federation of Journalists (IFJ) to encourage journalists to voluntarily adhere to the Declaration as a global standard of professional conduct.

23. In addition, the Special Rapporteur emphasizes the importance for journalists to be alert to the danger of discrimination being furthered by the media, and to do the utmost to avoid facilitating such discrimination based on, inter alia, race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. In this regard, the Special Rapporteur notes that, in accordance with international human rights law, any expression of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence should be prohibited, as should the dissemination of ideas based on racial superiority or hatred. Moreover, the Special Rapporteur encourages journalists to promote, through their work, a deeper understanding of racial, cultural and religious diversity, and to contribute to developing better intercultural relationships.

A. Trends

24. Journalists play an essential watchdog role in ensuring transparency and accountability in the conduct of public affairs and other matters of general interest by keeping the public informed. However, it is their monitoring role and their ability to influence public opinion which frequently result in their becoming targets of various human rights violations, including abduction, arbitrary detention, assault, enforced disappearance, expulsion, extrajudicial killing, harassment, kidnapping, threats and acts of violence and of discrimination, imprisonment, persecution, and torture, as well as surveillance, search and seizure. Such acts constitute, first and foremost, a violation of journalists' right to freedom of expression and press freedom, as they are aimed at preventing journalists from reporting and expressing their opinions on sensitive issues. Attacks against journalists also constitute a violation of the right of the public to receive information.

25. The most severe form of violence against journalists is what has often been referred to as "censorship by killing". According to IFJ, 139 journalists and media personnel were killed worldwide in 2009; 113 (81 per cent) of those deaths were the

[3] See, for example, the Inter-American Declaration of Principles on Freedom of Expression and the Chapultepec Declaration adopted on 11 March 1994.

result of targeted killings.[4] In addition, according to the Committee to Protect Journalists (CPJ), the number of journalists and media personnel killed in 2009 represented the highest number of such deaths recorded since 1992, owing largely to the massacre of 30 journalists and media workers in the Maguindanao province of the Philippines on 23 November 2009.[5] The Special Rapporteur notes that the six countries with the highest number of journalists killed in 2009 are, in descending order, the Philippines, Somalia, Iraq, Pakistan, Mexico and the Russian Federation.[6]

26. The suspected perpetrators of murders of journalists since 1992 are political groups (30 per cent), Government officials (24 per cent), criminal groups (13 per cent), paramilitary groups (7 per cent), military officials (5 per cent), local residents (2 per cent) and mob violence (2 per cent), while the rest are unknown (19 per cent).[7]

27. Although reporting from situations of armed conflict significantly increases the risks to their lives, more journalists are, in fact, killed in non-conflict situations than are killed during armed conflict.[8] Indeed, the Special Rapporteur would like to underscore the fact that the majority of casualties are not international war correspondents, but local journalists working in their own countries, mostly in peacetime, covering local stories. As highlighted in the joint statement issued by the Special Rapporteur and the three regional rapporteurs on freedom of expression, the Special Rapporteur would like to reiterate that journalists reporting on social problems, including organized crime or drug trafficking, voicing criticism of Government or the powerful, or reporting on human rights violations or corruption are at particular risk.[9] Another factor that often places journalists at risk is reporting on environmental matters, electoral processes, demonstrations or civil disorder. The Special Rapporteur also notes that in at least 4 of every 10 cases in which journalists were murdered, the victims had reported receiving threats before they were killed.[10]

28. Perhaps one of the biggest factors exacerbating the risk of threats and actual acts of violence against journalists is impunity, or the lack of investigation of acts committed and prosecution of persons responsible. As the Special Rapporteur noted in his most recent report to the Human Rights Council, perpetrators have enjoyed total impunity in 94 per cent of cases in which journalists were murdered in 2009, while the percentage of cases in which even some partial measure of justice has been obtained has been minimal.[11] The fact that persons responsible for the killings are not brought to account emboldens others who would prefer journalists to remain silent to follow suit, thus perpetuating a vicious circle, which, in the long term, has a

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[4] International Federation of Journalists, "End of a deadly decade: journalists and media staff killed in 2009", available at http://www.ifj.org/assets/docs/059/046/c93b13b-7a4a82e.pdf.

[5] Committee to Protect Journalists (CPJ), see http://www.cpj.org/killed/2009. For the press release issued by the Special Rapporteur regarding the Magindanao massacre, see http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=9657&LangID=E.

[6] CPJ, http://www.cpj.org/killed.

[7] Ibid.

[8] Report by the Director-General to the Intergovernmental Council of the International Programme for the Development of Communication, United Nations Educational, Scientific and Cultural Organization, CI-10/CONF.202/4/Bis 2, 30 March 2010.

[9] "Ten key challenges to freedom of expression in the next decade" (see A/HRC/14/23/Add.2).

[10] CPJ, "Getting Away with Murder", 2010 Impunity Index, available at http://cpj.org/reports/2010/04/cpj-2010-impunity-index-getting-away-with-murder.php.

[11] A/HRC/14/23, para. 94.

"corrosive and corrupting effect on society as a whole", as underscored by the Secretary-General.[12]

29. The Special Rapporteur notes that the 12 countries with the highest number of unresolved murders of journalists expressed as a proportion of the country's population are (in descending order): Iraq (88), Somalia (9), Philippines (55), Sri Lanka (10), Colombia (13), Afghanistan (7), Nepal (6), Russian Federation (18), Mexico (9), Pakistan (12), Bangladesh (7), and India (7).[10]

30. Journalists, confronted with attacks, threats and possible imprisonment, are often forced to flee their home countries to avoid risking their lives. Since 2001, more than 500 journalists have reportedly fled their countries of origin, and 454 remained in exile as at June 2010.[13] At least 85 journalists fled their home countries between 1 June 2009 and 31 May 2010, double the number recorded in the previous year.[14] In addition, at least 29 editors, reporters and photographers have fled the Islamic Republic of Iran since June 2009, the highest annual tally from a single country in a decade.[15] Moreover, the exile rate of journalists fleeing Africa has allegedly tripled over the past year, with at least 42 journalists, most of them from Ethiopia and Somalia, fleeing their homes.

31. The Special Rapporteur would like to draw attention to the difficulties faced by journalists who are forced to leave their countries of origin, as less than a third of exiled journalists are able to continue to work in their profession.[16] They also encounter challenges as they attempt to establish a new legal status and adjust to different languages and cultures. The recipient States have an obligation to grant refugee status to journalists who meet the criteria stipulated in article 1A of the 1951 Convention relating to the Status of Refugees, not to expel or return them to the frontiers of territories where their life or freedom would be threatened, and to ensure that journalists in exile enjoy their rights. However, the Special Rapporteur would like to stress the obligation of all States to guarantee the protection of journalists in their own countries in the first place.

B. Protection under international human rights law

32. While the provisions under international humanitarian law are not applicable in situations of internal unrest accompanied by violence below the level of that which characterizes an armed conflict, journalists are afforded protection under international human rights law.

33. The right of all individuals to freedom of opinion and expression is stipulated in article 19 of the Universal Declaration of Human Rights and article 19(2) of the International Covenant on Civil and Political Rights, which states that "everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers,

[12] Secretary-General's message for 2010 on the occasion of World Press Freedom Day, available at http://www.un.org/en/events/pressfreedomday/sg.shtml.

[13] CPJ, "Journalists in exile 2010: an exodus from Iran, East Africa", available at http://cpj.org/reports/2010/06/journalists-exile-2010-iran-africa-exodus.php.

[14] Ibid.

[15] Ibid.

[16] Ibid.

either orally, in writing or in print, in the form of art, or through any other media of his choice". The Special Rapporteur notes that 166 States, or the majority of the States Members of the United Nations, have ratified the International Covenant on Civil and Political Rights, while 72 States are signatories.[17]

34. The Special Rapporteur would like to reiterate that under international human rights law, as stipulated in, inter alia, article 2 of the International Covenant on Civil and Political Rights, States have the obligation to respect and to ensure to all individuals within its territory and subject to its jurisdiction the right to freedom of opinion and expression. The obligation to respect entails that States must refrain from restricting the exercise of all individuals' right to freedom of opinion and expression, unless certain criteria under article 19(3) of the Covenant are met, as elaborated below. The obligation to ensure the right constitutes a positive duty to: (a) protect individuals against acts committed by non-State actors and (b) fulfil, or facilitate the enjoyment of, the right.

35. The obligation to respect means that States must refrain from interfering with individuals' enjoyment of rights. While article 19(3) of the International Covenant on Civil and Political Rights permits States to impose certain limitations on the right to freedom of expression, the Special Rapporteur is concerned that, all too often, States invoke this provision to justify undue interference with journalists' right to freedom of expression to prevent them from exposing corruption or misconduct by the Government or powerful private entities, or from reporting on other politically sensitive issues. Even though such limitations may be provided by law as required by article 19(3), in many cases the provisions are vague and ambiguous and are accompanied by harsh sentences, including imprisonment, and disproportionate fines. The Special Rapporteur would like to remind States that limitations on the right to freedom of expression must be the exception, rather than the rule. Further details regarding the criteria which must be met when States attempt to limit the right to freedom of expression are set out in the Special Rapporteur's most recent report to the Human Rights Council.[18]

36. The Special Rapporteur notes that, in time of public emergency which threatens the life of the nation and which is officially and lawfully proclaimed in accordance with international law, a State may derogate from certain rights, including the right to freedom of expression. However, derogations are permissible only to the extent strictly required by the exigencies of the situation and only when and for so long as they are not inconsistent with its obligations under international law.[19] Moreover, there are certain non-derogable rights, as outlined in article 4(2) of the International Covenant on Civil and Political Rights. Hence, a journalist should never, under any circumstances, be arbitrarily deprived of his or her life, subjected to torture or to cruel, inhuman or degrading treatment or punishment, imprisoned merely on the grounds of inability to fulfil a contractual obligation, held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence at the time when it was committed, denied recognition as a person before the law, or denied the right to freedom of thought, conscience and religion.

[17] United Nations Treaty Collection, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en.

[18] A/HRC/14/23, paras. 72-87.

[19] See article 4 of the International Covenant on Civil and Political Rights, and Human Rights Committee General Comment No. 29 (CCPR/C/21/Rev.1/Add.11).

37. The obligation to protect is particularly important in relation to violence against journalists committed by non-State actors. Specifically, States have the obligation to take appropriate measures or to exercise due diligence to prevent any harm caused by private persons or entities, a failure of which can amount to a violation of article 2 of the International Covenant on Civil and Political Rights.[20]

38. The obligation to fulfil or to facilitate the enjoyment of the right to freedom of expression requires States to take positive and proactive measures, including, for example, allocating sufficient attention and resources to prevent attacks against journalists and taking special measures to address such attacks, including providing protection for journalists. It also encompasses the obligation to create conditions to prevent violations of the right to freedom of expression, including by ensuring that relevant national legislation complies with their international human rights obligations and is effectively implemented.

39. In addition, States have an obligation to investigate threats and acts of violence against journalists promptly, thoroughly and effectively through independent and impartial bodies.[21] Following investigations, States must ensure that those responsible are brought to justice so as to prevent impunity, and make reparation to individuals whose rights have been violated. The latter generally entails appropriate compensation and can involve, where appropriate, restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices.[22]

40. Moreover, in situations where journalists find themselves in the territory of another State, the host State is also obliged to respect, protect and fulfil their rights, including their right to freedom of opinion and expression. This obligation also applies to an occupying power in situations of occupation, as well as forces of a State party acting outside its territory, such as forces constituting a national contingent of a State party assigned to an international peacekeeping or peace enforcement operation.[23]

41. In sum, international human rights law guarantees the right to freedom of expression of all individuals, including journalists, as well as their right to life, liberty and security, among other rights. However, despite those existing norms and standards, attacks against journalists continue, as highlighted above (see paras. 24-31). The Special Rapporteur strongly emphasizes the need for States to abide by their international obligations by taking more effective action on the ground to ensure the effective protection of journalists, especially where there is a pattern of attacks against them.

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[20] Human Rights Committee, General Comment No. 31, Nature of the General Legal Obligation on States Parties to the Covenant (CCPR/C/21/Rev.1/Add.13), para. 8.

[21] Ibid., para. 15. See also Human Rights Council resolution 12/16, para. 5.

[22] CCPR/C/21/Rev.1/Add.13, para. 16.

[23] Ibid., para. 10.

IV. Protection of journalists in situations of armed conflict

A. Trends

42. The Special Rapporteur would like to underscore the key role that journalists play in situations of armed conflict, as they shed light on events unfolding on the battlefield, including potential abuses and violations of international human rights and humanitarian law committed by parties to a conflict. In the *Randal* case, the Appeals Chamber of the International Tribunal for the Former Yugoslavia noted that journalists working in war zones served "a public interest" because they "play a vital role in bringing to the attention of the international community the horrors and reality of conflict".[24] In addition, in his report to the Security Council on the protection of civilians in armed conflict, the Secretary-General highlighted the important role of the media and information in the context of humanitarian operations, noting that the awareness of distant events allows informed assessment and helps humanitarian agencies to shape an appropriate response before going into a conflict area.[25]

43. The Special Rapporteur recognizes that war reporting is inherently dangerous, as journalists are exposed to dangers arising from military operations and, instead of fleeing the combat zone, often seek proximity. In his most recent reports on the protection of civilians in armed conflict, the Secretary-General also expressed concern regarding the increasing number of journalists and media assistants killed or injured while reporting from areas of conflict, highlighting the fact that fatalities have resulted from excessive risk-taking, crossfire, or deliberate targeting by parties to a conflict.[26] In addition, owing to their work, journalists are often suspected of being spies during armed conflicts and are either "eliminated" or used deliberately as "bargaining chips" by warring parties.

44. While being present in zones of conflict inevitably augments the risks posed to journalists' lives, the Special Rapporteur would like to stress that, increasingly, journalists are deliberately targeted and their work obstructed. Indeed, their role in exposing human rights abuses and atrocities and unpopular opinions or situations place them at risk of being subjected to various forms of harassment and attacks by warring parties who would prefer them to remain silent. Such acts take many forms and can range from denial of access to certain areas, censorship and harassment, abductions, arbitrary arrest and detention and enforced or involuntary disappearances to killings. Although more journalists are killed in non-conflict situations than during armed conflict (see para. 27 above), it is also worth noting that half of the countries listed as the 20 most dangerous for journalists by the Committee to Protect Journalists (CPJ) are or were in situations of armed conflict (Afghanistan, Algeria, Colombia, Iraq, Israel and the Occupied Palestinian Territories, Somalia, Sierra Leone, Sri Lanka and Rwanda).[27]

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[24] *Prosecutor v. Radoslav Brdjanin and Monir Talic*, International Tribunal for the Former Yugoslavia, decision on interlocutory appeal, 11 December 2002 (also known as the *Randal* case).

[25] S/2001/331, para. 43.

[26] See S/2009/277, para. 19, and S/2007/643, paras. 29 and 30.

[27] CPJ, http://cpj.org/killed.

45. Death is not the only result of attacks against journalists: those who return from conflict zones or dangerous assignments often suffer from post-traumatic stress disorder and other negative psychological consequences, as well as permanent physical injuries. The Special Rapporteur therefore stresses the importance of ensuring that journalists, media professionals and associated personnel receive safety and first-aid training, that they are appropriately equipped and insured and that effective follow-up is provided to them after they have been on a dangerous assignment.

46. One of the factors which makes it difficult to ensure the safety and protection of journalists in situations of conflict is that many current conflicts involve not States with regular armies fighting each other, but non-State actors who flout international humanitarian or human rights law. In addition, modern conflicts have become more complex owing to the involvement of multiple non-State actors, as well as the so-called "civilianization" of armed conflict and the use of new means and methods of warfare. Such factors undoubtedly exacerbate the manifold dangers faced by journalists and other media professionals.

47. However, the Special Rapporteur would like to emphasize that, despite the changing nature of armed conflicts today, there are sufficient protection guarantees for journalists under existing legal standards, as outlined below.

B. Protection under international humanitarian law and international human rights law

48. International humanitarian law protects journalists and other media professionals in times of armed conflict. In an international armed conflict, a journalist is entitled to all rights and protection granted to civilians, as stipulated in article 79 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I). The same protection also applies to non-international armed conflicts during which journalists are considered to be civilians by virtue of customary international law.[28] Hence, although there are only two explicit references to media personnel under international humanitarian law (article 79 of Additional Protocol I, regarding journalists engaged in dangerous professional missions in areas of armed conflict, and article 4A(4) of the Geneva Convention relative to the Treatment of Prisoners of War (Third Geneva Convention), regarding, inter alia, war correspondents), all provisions related to the protection of civilians in the four Geneva Conventions and the Additional Protocols thereto are applicable to journalists.

49. Most important, as civilians, journalists are protected against direct attacks unless and for such time as they take direct part in hostilities. Violations of this rule constitute a grave breach of the Geneva Conventions and Additional Protocol I, and an intentional attack against a civilian also amounts to a war crime under the Rome Statute of the International Criminal Court, in both international and

[28] See Security Council resolution 1738 (2006); Council of Europe Recommendation No. R (96) 4 of the Committee of Ministers to member States on the protection of journalists in situations of conflict and tension, 3 May 1996; and International Committee of the Red Cross study on customary international humanitarian law, 2005, rule 35.

non-international armed conflicts.[29] With regard to acts amounting to direct participation in hostilities, the Special Rapporteur would like to stress that, as clarified by the International Committee of the Red Cross (ICRC), three cumulative requirements must be met: (a) the act must be likely to adversely affect the military operations or military capacity of a party to an armed conflict or, alternatively, to inflict death, injury or destruction on persons or objects protected against direct attack (threshold of harm); (b) there must be a direct causal link between the act and the harm likely to result either from that act or from a coordinated military operation of which the act constitutes an integral part (direct causation); and (c) the act must be specifically designed to directly cause the required threshold of harm in support of a party to the conflict and to the detriment of another (belligerent nexus).[30] Hence, journalists performing tasks in the conduct of their profession, such as recording videos, taking photographs or recording information solely for the purpose of informing the public, are not considered as direct participants in hostilities, and thus do not lose their protection as civilians under international humanitarian law.

50. During times of conflict, journalists are at a heightened risk of being subjected to arbitrary detention and internment for alleged security reasons.[31] In an international armed conflict, war correspondents, or representatives of the media who are accredited to, and accompany, the armed forces without being members thereof, are entitled to the status and treatment of a prisoner-of-war in case of capture. This is by virtue of the fact that they are formally authorized to accompany the armed forces and aim to keep the closest possible contact with the armed forces and thus inevitably share the fate of the armed forces.[32] Hence, war correspondents benefit from all the protections of the Third Geneva Convention as supplemented by Additional Protocol I and customary international law. All other journalists who fall into the hands of a party to an international armed conflict benefit at least from the protections granted in article 75 of Additional Protocol I, which includes, inter alia, prohibition of violence to life, health or physical or mental well-being, humiliating and degrading treatment, and taking of hostages. They are also entitled to fair trial guarantees in the case of detention for penal offences. In addition, journalists in the hands of a party to the conflict or occupying power of which they are not nationals benefit from the protections granted by the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention).

51. In the case of non-international armed conflicts, there is no distinction between war correspondents and other journalists under international humanitarian law, and the protection for all journalists emanates from common article 3 of the Geneva Conventions and the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II). This includes, for example, protection from violence to life, health and physical or mental well-being, including torture, hostage-taking,

[29] Article 8(2)(b)(i) and e(i).

[30] Nils Melzer, Legal Adviser, International Committee of the Red Cross, *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law*, pp. 46-64.

[31] Statement of the International Committee of the Red Cross presented at the panel discussion on the protection of journalists in armed conflict during the fourteenth session of the Human Rights Council, available from the Human Rights Council extranet (http://portal.ohchr.org).

[32] Robin Geiss, "The Protection of Journalists in Armed Conflicts", *German Yearbook of International Law*, vol. 51, 2008, p. 307.

humiliating and degrading treatment, as well as threats to commit such acts. They are also entitled to fair trial guarantees (articles 4, 5, 6 of Additional Protocol II). The Special Rapporteur would like to emphasize that violations of most of these provisions are punishable as war crimes.

52. The Special Rapporteur would like to highlight the fact that, in addition to being afforded protection under international humanitarian law as civilians, journalists and other media professionals are protected under international human rights law even during armed conflict. Indeed, as emphasized by, inter alia, the Human Rights Committee, in situations of armed conflict, international humanitarian law and international human rights law are not mutually exclusive, but complementary.[33] As such the obligation of States to respect, protect and fulfil the right of all individuals to freedom of expression, as well as their right to life, liberty and security (see section III.B above), continue to apply during armed conflict alongside international humanitarian law.

53. Hence, as civilians, all journalists, whether accredited to or embedded with the forces involved, attached to adversary forces or operating unilaterally, are provided with comprehensive protection under international humanitarian law during armed conflict, provided they do not directly participate in hostilities. The Special Rapporteur would like to discourage the granting of special protection or special status to journalists under international law, as this would necessitate the formulation of a precise definition of journalists as a protected category and the clearer identification of journalists in armed conflict, both of which could potentially lead to significantly decreased protection for journalists. The former might require journalists to be duly accredited and recognized by some public authority, thus increasing interference by the State, and the latter might place journalists in further danger, since many are targeted precisely because they are journalists, as explained above. Thus, the Special Rapporteur firmly believes that existing standards are sufficient, but that respect for and the implementation of such standards must be strengthened.

C. Initiatives taken by various stakeholders

54. Various stakeholders have addressed the issue of the protection of journalists in armed conflict, including United Nations bodies and civil society organizations. On 23 December 2006, the Security Council adopted a landmark resolution on the protection of journalists in armed conflict (resolution 1738 (2006)), in which it expressed its deep concern regarding the frequency of deliberate attacks against journalists, media professionals and associated personnel in armed conflict, in violation of international humanitarian law, and called upon all parties to an armed conflict to put an end to such practices. It also emphasized the responsibility of States, as well as their obligation to end impunity and to prosecute those responsible for serious violations. In accordance with the request made by the Security Council through that resolution, the Secretary-General has included a section on the protection of journalists in armed conflict in his reports on the protection of civilians in armed conflict.

[33] CCPR/C/21/Rev.1/Add.13, para. 11.

55. The Special Rapporteur also welcomes the adoption by the Security Council of resolutions related to countries with regard to which it highlighted the importance of freedom of expression, expressed concern at the situation of journalists and media professionals, and encouraged peacekeeping and other missions to look into the issue.[34] Moreover, on 14 January 2009, the Council adopted an updated aide-memoire for the consideration of issues pertaining to the protection of civilians in armed conflict, which contains a section dedicated to media and information and the protection of journalists.[35] The aide-memoire condemned and called for the immediate cessation of attacks against journalists, media professionals and associated personnel in situations of armed conflict, and encouraged United Nations peacekeeping and other relevant missions authorized by the Security Council to include a mass media component that can disseminate information about international humanitarian law and international human rights law.[36]

56. Like the former Commission on Human Rights, the Human Rights Council has regularly expressed concern regarding attacks against journalists in resolutions on freedom of expression, including the most recent resolution on the issue, adopted in October 2009 (Council resolution 12/16), in which the Council expressed its continuing concern that threats and acts of violence, including killings, attacks and terrorist acts, particularly directed against journalists and other media workers in situations of armed conflict, have increased and are not adequately punished, in particular in those circumstances where public authorities are involved in committing those acts. The Council called upon States to ensure that victims of such violations have an effective remedy, to investigate effectively threats and acts of violence, including terrorist acts, against journalists, including in situations of armed conflict, and to bring to justice those responsible in order to combat impunity. It also called on all parties to armed conflict to respect international humanitarian law, and to allow, within the framework of applicable rules and procedures, media access and coverage, as appropriate, in situations of international and non-international armed conflict.[37]

57. In addition to welcoming the resolutions of the Human Rights Council, the Special Rapporteur welcomes the convening by the Council of a discussion panel focusing specifically on the protection of journalists in armed conflict during its fourteenth session, in which he participated. The Special Rapporteur is encouraged by statements made by States condemning attacks against journalists, reiterating the obligations under existing international standards to protect journalists in armed conflict, and stressing the importance of Security Council resolution 1738 (2006). While the issue is of ongoing concern, given the fact that more journalists are killed in non-conflict situations than in armed conflict, the Special Rapporteur would encourage the convening of another panel to consider, inter alia, the protection of journalists in situations where the threshold of armed conflict has not been reached.

58. UNESCO has also taken various initiatives relating to the protection of journalists as part of its mandate to defend freedom of expression and press

[34] See, for example, Security Council resolutions 1933 (2010) on Côte d'Ivoire (paras. 6 and 7); 1917 (2010) on Afghanistan (para. 34); and 1910 (2010) on Somalia (thirteenth preambular paragraph).

[35] Annexed to the statement by the President of the Security Council (S/PRST/2009/1), p. 12 and 13.

[36] Ibid., p. 13.

[37] Human Rights Council resolution 12/16, paras. 3 (c), 5 (c) and 7.

freedom. For example, in 1997, the General Conference endorsed two major declarations on media assistance to conflict and post-conflict situations, as well as on the relationship between media and good governance. World Press Freedom Day 2007 focused on the theme of journalists' safety, and the participants adopted the Medellin Declaration on Securing the Safety of Journalists and Combating Impunity. In March 2008, the Intergovernmental Council of the International Programme for the Development of Communication (IPDC) adopted a decision on the safety of journalists and the issue of impunity, which gave IPDC a central role in monitoring the follow-up to killings condemned by the Director-General of UNESCO. The latest report by the Director-General to the Intergovernmental Council of IPDC, on the safety of journalists and the danger of impunity, was published in March 2010.

59. The Special Rapporteur would also like to highlight the essential role played by ICRC in protecting journalists and other media professionals in areas of conflict. ICRC contributes to making the rules that protect journalists and civilians known and better respected and, since 1985, it has maintained a permanent hotline (+41 79 217 32 85), which is at the disposal of journalists who find themselves in trouble in armed conflicts. Journalists, as well as their employers and relatives, may alert ICRC when a journalist is missing, wounded or detained in order to request assistance. The kind of protection services that can be provided by ICRC to journalists range from seeking verification of a reported arrest and access in the framework of ICRC detention visits, providing information to relatives and employers on the whereabouts of a journalist who is being sought, maintaining family links and actively tracing missing journalists, to evacuating wounded journalists.

60. Several civil society organizations have also taken initiatives to address the issue of protection of journalists in armed conflict. CPJ, IFJ, the International News Safety Institute, the Press Emblem Campaign and Reporters without Borders, to name only a few, have contributed significantly to raising the awareness of the international community regarding attacks against journalists and their safety concerns. Their engagement covers a wide range of actions, from providing training to journalists to the systematic reporting of attacks against and killings of journalists. These organizations have also developed a range of handbooks, codes and guidelines and safety information for journalists and other media professionals.

V. Protection of "citizen journalists"

61. The Special Rapporteur intends to submit a full thematic report to the Human Rights Council on the issue of freedom of expression on the Internet. However, in the present report, the Special Rapporteur would like to highlight the phenomenon of citizen journalism and the risks that non-professional journalists also encounter in exercising their legitimate right to freedom of expression.

62. In times of armed conflict, internal disturbance or natural disaster, ordinary citizens may become engaged in reporting activities. Such persons are usually referred to as "citizen journalists". While there is no universal definition of citizen journalism as such, the concept is usually understood as independent reporting, often by amateurs on the scene of an event, which is disseminated globally through modern media, most often the Internet (for example, through photo- or video-

sharing sites, blogs, microblogs, online forums, message boards, social networks, podcasts, and so forth). New technologies have provided unprecedented access to means of global communication, and have therefore introduced new means of reporting on news and events around the world.

63. Citizen journalists are not trained professional journalists. At times, citizen journalism has been criticized as being unreliable or lacking objectivity. Nevertheless, the importance of this new form of journalism cannot be underestimated. Indeed, through a participatory approach, citizen journalists contribute to the creation of a richer diversity of views and opinions, including information about their communities and groups in need of particular attention, such as women, indigenous people and minorities, and play a critical watchdog role in countries where freedom of the press is not a reality. More important, they can provide an immediate, insider's view of a conflict or catastrophe, whereas professional journalists may not be granted access to places where hostilities unfold or may have to travel for days before reaching a disaster zone or area.

A. Trends

64. Whether at the scene of a dramatic event or documenting and disseminating sensitive information, even during times of peace, citizen journalists often face risks similar to those faced by professional journalists, including acts of reprisal for their reporting activities. Citizen journalists have been subjected to acts of harassment and intimidation, including death threats, attacks against their physical integrity, arbitrary arrest and detention, prosecution, prison sentences and/or fines, and even assassination. Acts of harassment and intimidation often include repeated and unsupported police summonses, the targeting of their families, smear campaigns to discredit them and travel bans and other restrictions on movement.

65. As citizen journalists are by nature more isolated, they are more vulnerable to attack than professional journalists. However, citizen journalists enjoy less protection than their counterparts in traditional media, as they do not have the support of media organizations and networks, in particular the organizational resources, including lawyers and financial resources, which can help shield them from harassment.

66. Since 2004, the Special Rapporteurs on the promotion and protection of the right to freedom of opinion and expression have sent numerous urgent appeals and letters of allegations to Member States on behalf of individuals whose rights were violated because they expressed themselves via the Internet, often on blogs. The following cases, described in communication reports of the Special Rapporteur which are available publicly, illustrate some of the challenges faced by citizen journalists. Responses of the States concerned, where provided, can be found in the relevant communication reports.

67. On 7 April 2006, the Special Rapporteur, together with the Special Representative of the Secretary-General on the situation of human rights defenders and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, sent an urgent appeal to the Government of Honduras in relation to the physical assault by armed men against a female member

of the Lenca indigenous community and contributor to the "Indymedia" website because of her reporting activities on the human rights situation of her community.[38]

68. On 20 February 2009, the Special Rapporteur, together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal to the Government of Egypt regarding the situation of an Egyptian citizen and student blogger who, on 6 February 2009, had been arrested and allegedly beaten outside his home in Qotour city by State Security Investigations officers. On his blog, he had criticized the Egyptian policy regarding Gaza, including the restrictions on humanitarian aid delivered through Egypt to Gaza.[39]

69. On 6 January 2010, the Special Rapporteur sent a letter of allegations to the Government of the Islamic Republic of Iran regarding ongoing concerns regarding the situation of journalists, bloggers and persons who express their views which are critical of the Government in the Islamic Republic of Iran. According to information received, several days prior to 7 December 2009 (National Student Day), various censorship measures were allegedly implemented to limit access to and the flow of information. On 5 December, Internet connections were reportedly blocked or slow, in particular in Tehran, Isfahan and Shiraz, affecting various websites, in particular those presenting views supportive of the opposition leader. Reports also claim that it was impossible to browse or send e-mails. Before and during the demonstrations, mobile phone connections and the Short Message Service (SMS) were also reportedly suspended or jammed. In addition, demonstrators who were using mobile phones to take photographs or to film the events were also allegedly arrested or had their phones seized by security forces.[40]

70. On 9 July 2009, the Special Rapporteur, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, sent an urgent appeal to the Government of China in relation to violent clashes between Han and Uighurs during demonstrations in Urumqi, the capital of the Xinjiang Uighur Autonomous Region, during which at least 156 people were killed and more than 800 were injured. During the protests, mobile phone services were reportedly blocked and Internet connections minimized, with websites and online discussion forums ordered not to publish any material related to the protests.[41]

71. In addition, the Special Rapporteur notes that States frequently utilize restrictive domestic legislation to investigate, arrest and sentence citizen journalists. Such laws include press and penal code provisions, emergency or national security laws and emerging Internet-specific laws and decrees. Examples of the use of such laws and the consequent violations of the rights of citizen journalists are highlighted below, based on urgent appeals and letters of allegations sent[42] and press

[38] A/HRC/4/27/Add.1, para. 258.

[39] A/HRC/14/23/Add.1, paras. 729-735.

[40] Ibid., paras. 1181-1186.

[41] Ibid., paras. 339-343.

[42] The cases have been published in the communications report of the Special Rapporteur. See http://www2.ohchr.org/english/issues/opinion/annual.htm.

statements[43] issued by the Special Rapporteur, which are already in the public domain.

Penal codes and press laws

72. National penal codes and press laws often contain vaguely defined provisions that criminalize criticism of Government or reporting on politically or socially sensitive topics, which are used to punish not only professional journalists, but also citizen journalists. For example, on 4 March 2005, the Special Rapporteur sent an urgent appeal to the Government of Malaysia with regard to the situation of a blogger who was reportedly under investigation for acts fostering religious disunity for comments posted on his blog regarding religion and politics. He faced imprisonment for a period of two to five years if found guilty under section 298A of the penal code.[44]

73. On 15 July 2009, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal to the Government of Azerbaijan concerning a youth activist and a prominent video-blogger who, on 8 July 2009, together with a colleague, was physically assaulted by two men in civilian clothing while having lunch in a restaurant. Both reported the attack to the police and, as a result, they were interrogated for several hours and subsequently arrested. The following day, a preliminary hearing was held in their case, and the video-blogger and his colleague were charged with hooliganism under article 221 of the criminal code of Azerbaijan and remanded to two months pre-trial detention pending further investigation of the case. The hearing in their case was held in closed session. The assailants were present at their hearing only as witnesses, and remained free at the time the communication was sent.[45]

74. On 13 July 2010, the Special Rapporteur issued a press statement regarding draft law 1415 of Italy on surveillance and eavesdropping for criminal investigations, whose provisions proposed the introduction of amendments to the penal code. The Special Rapporteur expressed his concern at the fact that, according to the draft provisions, anyone who was not accredited as a professional journalist could be sentenced to imprisonment for up to four years for recording any communication or conversation without the consent of the person involved and publicizing such information. He stated that such a severe penalty would seriously undermine all individuals' right to seek and impart information.

Emergency or national security laws

75. Emergency or national security laws are also often used to justify restrictions on citizen journalists' expression of views or dissemination of information through the Internet, often on the basis of protecting vaguely defined national interests or public order. For example, on 27 February 2004, the Special Rapporteur, together with the Chairperson of the Working Group on Arbitrary Detention and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal to the Government of the Syrian Arab Republic regarding the arrest of a person in relation to articles which he distributed by e-mail,

[43] See http://www2.ohchr.org/english/issues/opinion/index.htm.
[44] E/CN.4/2006/55/Add.1, para. 521.
[45] A/HRC/14/23/Add.1, paras. 84-87.

mainly from the Akhbar al-Sharq Internet site (www.thisissyria.net).[46] The Syrian authorities were quoted as saying that material on the site is "detrimental to the reputation and security of the nation" and "full of ideas and views opposed to the system of Government in Syria".

Internet-specific laws

76. In other cases, laws or decrees that explicitly regulate online expression have been adopted and used to restrict the peaceful expression of opinion and ideas. For example, on 17 May 2010, at the conclusion of his fact-finding mission to the Republic of Korea, the Special Rapporteur issued a press statement in which he expressed concerns regarding Internet-specific legislation, in particular the Framework Act on Telecommunications and the Act on Promotion of Information and Communications Network Utilization and Information Protection. The Special Rapporteur noted that the former was used as the basis for arresting a blogger for posting online articles which were critical of the Government's economic policy in the context of the financial crisis, while the latter has been used to delete online posts and to sentence or fine individuals who initiated online campaigns for a consumer boycott.

B. State obligations

77. Citizen journalists can by no means replace professional journalists. However, the growing phenomenon of threats, attacks, arrests, arbitrary detention, surveillance and prosecution of citizen journalists must be recognized, and their rights protected in accordance with States' obligations under international human rights law.

78. In this regard, the Special Rapporteur reminds States of their obligations to respect, protect and fulfil the right of citizen journalists to seek, receive and impart information and ideas of all kinds without fearing for their security (see section III.B above). Should they find themselves in situations of armed conflict, citizen journalists are also protected under international humanitarian law as civilians, in addition to the provisions under international human rights law.

VI. Conclusions and recommendations

79. The Special Rapporteur is alarmed and concerned that the number of journalists and media personnel killed in 2009 was the highest since 1992, and that 81 per cent of those killings were deliberate and targeted. While the risk of armed conflict increases the risk to the lives of journalists and other media professionals, more journalists were killed in non-conflict situations, mostly for reporting on organized crime or drug trafficking, environmental matters or human rights violations and corruption, or for voicing criticism of Government or the powerful.

80. Impunity for those who attack and/or kill journalists remains a central obstacle to guaranteeing the protection of journalists. The Special Rapporteur is deeply concerned that perpetrators have enjoyed total impunity in 94 per cent of cases in which journalists were murdered in 2009, and in only 2 per cent of cases of attacks

[46] E/CN.4/2005/64/Add.1, para. 847.

against journalists in 2009 were the offences tried before the competent authorities and the perpetrators and instigators prosecuted.

81. It is also worrying that the number of journalists forced into exile as a result of attacks, threats and possible imprisonment doubled between 2009 and 2010 compared with the previous year. While the host Government has the obligation to respect and to ensure the rights of all individuals within its territory, regardless of nationality or other grounds, the Special Rapporteur reiterates the obligation of all States to guarantee the protection of journalists and others who exercise their right to freedom of expression in their own countries in the first place.

82. Citizen journalists have come to play an increasingly important role in gathering and disseminating news, in particular in countries where press freedom is restricted, or in a disaster or conflict zone where professional journalists may not be present. While they cannot replace professionally trained journalists, they contribute to the public's access to a richer diversity of views, opinions and information. Like professional journalists, and for the same reasons, citizen journalists are subjected to acts of harassment and intimidation, including death threats, arbitrarily arrested and detained, prosecuted and sentenced to imprisonment and/or to harsh fines, and even assassinated. However, they enjoy less protection than professional journalists, as they do not have the support of media organizations and networks, and lack recognition as professional journalists.

83. The Special Rapporteur emphasizes that the problem with regard to continued and increasing violence against journalists, associated media personnel and citizen journalists is not lack of legal standards, but lack of implementation of existing norms and standards. The Special Rapporteur would thus like to make the following recommendations.

A. Member States

84. The Special Rapporteur calls upon all States to respect and implement their obligations under international human rights law and international humanitarian law, as well as existing norms and standards, to protect the rights of journalists and citizen journalists alike.

85. Most important, the Special Rapporteur urges all States to end impunity for threats and attacks against and the murder of journalists, media professionals, associated personnel and citizen journalists. In particular, the Special Rapporteur calls upon the 12 countries with the highest rates of impunity (see para. 29 above) to investigate all violations thoroughly and to prosecute the perpetrators.

86. In order to combat impunity, the Special Rapporteur calls upon States to ensure that the domestic criminal justice system functions effectively and efficiently at all stages, from investigation, prosecution and trial to the enforcement of judgements. It is the view of the Special Rapporteur that putting an end to impunity is one of the most effective ways to guarantee the protection of journalists and press freedom in the long term.

87. States also have an obligation to implement measures to prevent the recurrence of violence against journalists and citizen journalists, which may include ensuring that law enforcement agencies, security personnel and armed forces are provided with training on international human rights law and international humanitarian law,

including their obligation to protect journalists and to respect them as civilians during armed conflict.

88. Given that in at least 4 of every 10 cases involving the murder of journalists, the victims receive threats before being killed, the Special Rapporteur urges all Governments to investigate such threats and ensure effective protection, for example through witness protection programmes. In this regard, the Special Rapporteur notes that detailed guidelines and recommendations have been set out in the report of the Special Rapporteur on extrajudicial, summary and arbitrary executions (see A/63/313), the reports of the Office of the United Nations High Commissioner for Human Rights on the right to the truth (A/HRC/12/19 and A/HRC/15/33) and the analytical study on human rights and transitional justice (A/HRC/12/18).

89. The Special Rapporteur also encourages all States to establish an early-warning and urgent response mechanism for the protection of journalists; such a mechanism should also exist for the protection of human rights defenders. It should be an official State commission with high-level recognition and an appropriate budget, composed of high-level representatives of State institutions related to security, territorial administration and human rights, as well as representatives of journalists' associations, media associations and non-governmental organizations working on issues related to the right to freedom of expression. The Commission's plan of work and urgent response procedures should be determined through a common agreement among its members, according to the circumstances of the country or a region within the country.

90. As restrictive national laws are used to justify harassment and interference with citizen journalists' freedom of expression, the Special Rapporteur urges States to fulfil their international human rights obligations by ensuring that legal provisions that criminalize freedom of expression, whether in the penal code, press law or elsewhere, are in conformity with international legal standards. When promulgating Internet-specific laws, States must ensure that they comply with article 19 of the International Covenant on Civil and Political Rights and the Universal Declaration on Human Rights.

B. United Nations

91. The Special Rapporteur encourages the Security Council to continue to give priority to the issue of the protection of journalists in armed conflict, including by integrating the issue into the mandate of peacekeeping operations and other missions, as appropriate, in accordance with Security Council resolution 1738 (2006) and the aide-memoire (see S/PRST/2009/1).

92. The Special Rapporteur also welcomes the initiatives taken by various stakeholders on the issue of the protection of journalists in armed conflict, including United Nations bodies and organizations such as the Security Council, the Human Rights Council and UNESCO. The Special Rapporteur encourages all relevant United Nations entities to coordinate their activities and responses.

93. For States emerging from conflict situations, United Nations entities should consider providing assistance to States to establish robust democratic institutions and effective judicial and administrative mechanisms which would enhance their ability to protect and guarantee the rights of all individuals, including journalists,

and to create favourable conditions to promote and protect the right to freedom of expression.

C. Journalists, non-governmental organizations, media organizations and donors

94. The Special Rapporteur commends the courageous work of journalists and citizen journalists, who often risk their lives to inform the public. The Special Rapporteur encourages journalists and citizen journalists to uphold the highest standards of professional conduct and to report honestly, objectively and in an ethically responsible and independent manner, so as to enhance their credibility and protection.

95. In addition, the Special Rapporteur encourages journalists and citizen journalists to be aware of the dangers involved before entering a conflict or disaster zone and to receive appropriate training, including knowledge of first aid and munitions. In this regard, the Special Rapporteur notes that a number of media organizations have formulated guidelines for journalists so that they can be better prepared for assignments in a war zone. Such guidelines include the International News Safety Institute safety code, the Charter for the Safety of Journalists Working in War Zones or Dangerous Areas, developed by Reporters without Borders, and the Journalist Safety Guide of CPJ.

96. The Special Rapporteur encourages journalists and citizen journalists, should they encounter any human rights violations as a result of their work, to document them and to submit complaints to him by e-mail, at urgent-action@ohchr.org.

97. News organizations also have a responsibility to ensure that journalists and associated media personnel are provided with proper safety training and equipment in peacetime and in conflict so that they are prepared to confront the risks inherent in war zones, and to provide confidential professional counselling to journalists and media personnel who have experienced trauma and other forms of extreme stress in the course of their duties.

98. The Special Rapporteur encourages non-governmental organizations and other organizations working on the issue of the protection of journalists to continue their efforts and to work jointly through a coordinated approach.

99. The Special Rapporteur also encourages donors to support training courses, projects, policies and programmes to enhance the protection of journalists and citizen journalists.

United Nations A/65/285

General Assembly

Distr.: General
12 August 2010

Original: English

Sixty-fifth session
Item 69 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Missing persons

Report of the Secretary-General

Summary

In its resolution 63/183, on missing persons, the General Assembly requested the Secretary-General to bring the resolution to the attention of all Governments, competent United Nations bodies, specialized agencies, regional intergovernmental organizations and international humanitarian organizations and to submit a comprehensive report on the implementation of the resolution, including relevant recommendations, to the Human Rights Council at its relevant session and to the Assembly at its sixty-fifth session. The present report has been prepared in accordance with resolution 63/183.

* A/65/150.

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I. Introduction

1. The General Assembly, in its resolution 63/183, noted that the issue of persons reported missing in connection with international armed conflict, in particular those who are victims of serious violations of international humanitarian law and human rights law, continues to have a negative impact on efforts to put an end to those conflicts, rebuild affected societies and causes suffering to the families of missing persons, and stressed in that regard the need to address the issue from a humanitarian perspective and rule of law perspective, among others. The Assembly urged States strictly to observe and respect and ensure respect for the rules of international humanitarian law, as set out in the Geneva Conventions of 12 August 1949 and in the Protocols Additional thereto of 1977.

2. The General Assembly called upon States that are parties to an armed conflict to take all appropriate measures to prevent persons from going missing in connection with armed conflict, to account for persons reported missing as a result of such a situation and to take all necessary measures, in a timely manner, to determine the identity and fate of persons reported missing in connection with the armed conflict. It also reaffirmed the right of families to know the fate of their relatives reported missing in connection with armed conflicts and the duty of each party to an armed conflict, as soon as circumstances permit and, at the latest, from the end of active hostilities to search for the persons who have been reported missing by an adverse party.

3. In paragraphs 10 and 11 of the resolution, the General Assembly also urged the States to enhance their efforts to determine the fate of the missing persons and adopt legal mechanisms to address the needs of the relatives of the missing and recommended that the issue of missing persons be included in the post-conflict reconstruction process, in accordance to the rule of law and justice mechanisms.

4. The General Assembly requested States to pay the utmost attention to cases of children reported missing in connection with armed conflicts and to take appropriate measures to search for and identify those children and to reunite them with their families. It invited States that are parties to an armed conflict to cooperate fully with the International Committee of the Red Cross (ICRC) in establishing the fate of missing persons and to adopt a comprehensive approach to the issue, including all such legal and practical measures and coordination mechanisms as may be necessary, based on humanitarian considerations.

5. The General Assembly recognized the need for the collection, protection and management of data on missing persons according to international and national legal norms and standards and urged States to cooperate with each other and with other concerned actors working in this area, inter alia, by providing all relevant and appropriate information related to missing persons.

6. In response to a note verbale dated 8 April 2010, information was received from Afghanistan, Bahrain, Bosnia and Herzegovina, Colombia, Georgia, Greece, Iraq, Kazakhstan, Kyrgyzstan, Oman, Panama, Paraguay, the Russian Federation, Slovakia, Spain, the Syrian Arab Republic and Ukraine. Information was also received from the International Committee of the Red Cross, the International Commission on Missing Persons, and the Argentine Forensic Anthropology Team. The responses can be grouped under four general themes: measures to prevent persons from going missing; the right to know; developments in forensic sciences;

and the question of impunity. The four themes will be addressed in sections II to V below.

II. Measures to prevent persons from going missing

7. In its resolution 63/183, the General Assembly called upon States that are parties to an armed conflict to take all appropriate measures to prevent persons from going missing in connection with armed conflict and account for persons reported missing as a result of such a situation. Measures aiming at preventing persons from going missing include the adoption of laws and regulation and the use of means of identification by armed and security forces.

A. The adoption of laws and regulations

8. The development and promotion of national legislation, as outlined in resolutions adopted by international and intergovernmental organizations, remain essential in dealing with the issue of missing persons, preventing disappearances, ascertaining the fate of missing persons, ensuring the proper management of information and supporting the families of missing persons. As already mentioned in the previous report of the Secretary-General on missing persons (A/63/299), ICRC has prepared a model law on the basis of the Law of Missing Persons in Bosnia and Herzegovina, with an article-by-article commentary, to help States develop and adopt domestic legislation in that regard. The model law constitutes a framework, or a proposal for action, which can be adjusted for national needs; it can be used in whole or in part to develop or supplement existing internal legislation on various topics.

9. The ICRC model law contains eight chapters, covering a number of issues: definitions of terms such as "missing persons" and "relative of the missing" (under "general provisions"); basic rights and measures relating to persons deprived of their freedom and the right of their relatives to know; the legal status of missing persons and related rights; the tracing of missing persons; respect for the deceased; and criminal liability. In December 2009 ICRC and the Inter-Parliamentary Union jointly published *Missing Persons: a Handbook for Parliamentarians*, a tool that offers a comprehensive legal framework designed to help States and their competent national authorities to adopt or improve their national legislation on missing persons.

10. At the regional level and on the basis of the ICRC model law, a regional model law on missing persons was adopted in Saint Petersburg, Russian Federation, on 25 November 2008 by the 31st plenary session of the Inter-Parliamentary Assembly of the States of the Commonwealth of Independent States. At the national level, laws are being adopted with a view to preventing persons from going missing. In addition to the measures already mentioned in the previous report, Colombia adopted, in 2007, a national plan for the search of missing persons (Plan Nacional de Búsqueda), based on ICRC's recommendations. The International Commission on Missing Persons and the National Search Commission published an extensive report on the implementation and challenges for the plan in 2009.

11. ICRC is also conducting and supporting studies on the compatibility of domestic law with international humanitarian law as it affects the issue of missing persons. Such studies have already been carried out in a number of countries, including Armenia, Azerbaijan, Georgia, Guatemala, Indonesia, the Republic of Moldova, the Russian Federation and Sri Lanka. In certain contexts, such as Armenia and Azerbaijan, national authorities have started to use the above-mentioned regional model law on missing persons adopted by the Inter-Parliamentary Assembly of the Commonwealth of Independent States as a basis to draft their own legal framework. In Nepal, the legislative committee of Parliament is drafting a forced disappearances bill. In Timor-Leste, following the recommendations made by the Commission for Reception, Truth and Reconciliation, the Parliament is working on the establishment of a legal framework for missing persons and the adoption of policies and measures to ensure their effective implementation.

12. The International Commission on Missing Persons, which advised on the aforementioned legislative efforts, with an emphasis on facilitating the establishment and development of domestic rule of law mechanisms on the issue, has developed practical methods for enabling Governments to meet their obligations, including policy frameworks, central records and data management systems, which it disseminates to them, in addition to providing technical assistance with field operations. To date, such technical assistance has led to the identification of a total of 18,000 missing persons using their DNA. The Commission maintains an extensive laboratory working on missing persons cases and is a global resource for assistance to countries confronted with this issue.

13. With regard to steps taken by States, Afghanistan reported that it has adopted a transitional justice programme under the national programme for peace, reconciliation and justice in order to address crimes committed in the past, part of which addresses cases of enforced disappearances. The Afghan Independent Human Rights Commission is responsible for the documentation of crimes and the collection of related information from all over the country.

14. On 2 November 2004, the President of Georgia issued Ordinance No. 479 on the establishment of the State commission for finding missing persons missing as a result of hostilities relating to the territorial integrity of Georgia and for the protection of the rights of their family members. In addition, on 29 March 2005, the President issued Ordinance No. 170 on the adoption of the statute of the Commission. Article 2 of the statute develops recommendations and proposals for the President of Georgia on the following issues: finding missing persons; protecting the rights of families of the missing persons and deciding on the broad scope of provisions for their social security; determining the fate of persons missing as a result of armed conflicts relating to the territorial integrity of Georgia; establishing contacts with international organizations; and undertaking joint measures, if required. The Government of Georgia, in accordance with the guiding principles elaborated by ICRC, aims to prevent persons from going missing, to provide aid in the search for and the tracing of missing persons in the context of armed conflict or internal violence and to protect the rights and interests of missing persons and their relatives. With a view to providing effective search and identification tools for the tracing of missing persons, modern methods in the field of forensic sciences, including the use of DNA, are widely used in Georgia.

15. In December 2007, Spain enacted Act No. 52/2007, hereinafter referred to as the Historical Memory Act, and subsequently developed a whole series of provisions deemed for its effective implementation. The Act recognizes and enhances the rights of persons who were subjected to persecution or violence during the civil war and the dictatorship and introduces measures on their behalf, and grants a number of rights to the relatives of persons who disappeared during the Spanish Civil War and the Franco dictatorship. For example, article 11 of the Act stipulates that public administrations shall, within their areas of jurisdiction, offer facilities, on request, to the direct descendants of victims who wish to investigate, trace and identify persons who disappeared under violent circumstances during the civil war or the subsequent era of political repression and whose whereabouts are unknown. The article also requires the General State Administration to draw up action plans and to introduce subsidies to defray the costs of such activities. Articles 12 to 14 provide for a further series of measures and tools to facilitate the task of persons who wish to trace and or identify missing persons.

B. The use of means of identification by armed and security forces

16. In time of conflict, the production and proper use of means of identification by armed and security forces play an important role in terms of preventing persons from going missing. In that regard, Governments have the main responsibility for the production and compulsory use by their armed forces of such items as identification tags.

17. In its resolution 63/183, the General Assembly requested States to pay the utmost attention to cases of children reported missing in connection with armed conflicts and to take appropriate measures to search for and identify those children and to reunite them with their families. Means of personal identification for minors is of importance in terms of prevention, as they are particularly vulnerable in time of conflict, notably to forced recruitment. State authorities must, in that regard, take effective measures to provide means of personal identification to minors with a view to preventing their disappearance.

III. The right of families to know

18. In resolution 63/183, the General Assembly reaffirmed the right of families to know the fate of their relatives reported missing in connection with armed conflicts and the need for the parties to an armed conflict to search for persons reported missing by an adverse party. It also called upon States that are parties to an armed conflict to take all necessary measures, in a timely manner, to determine the identity and fate of persons reported missing in connection with the armed conflict and to provide family members with all relevant information they have on their fate.

19. The right to know extends beyond the conduct or immediate aftermath of hostilities. For example, case law has anchored the right to know in articles 2, 3 and 5 of the European Convention on Human Rights and Fundamental Freedoms.

A. Tracing

20. As underlined in resolution 63/183, effective measures must be taken to determine the identity and fate of persons reported missing. Both State authorities and armed groups bear this responsibility, which entails, first, a commitment to implementing international legal instruments, including the four Geneva Conventions and the Protocols Additional thereto, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, including universal and regional human rights instruments such as the European Convention on Human Rights and Fundamental Freedoms. Such commitment can also be demonstrated through the signing and ratifying of the International Convention for the Protection of All Persons from Enforced Disappearance.

21. Concrete efforts in this regard include the tracing activities carried out by ICRC during armed conflicts and other situations of violence. Those activities include collecting information about people unaccounted for and the circumstances under which they disappeared from their families, direct witnesses, the authorities and any other reliable sources. The information is stored centrally and managed in accordance with laws on the protection of personal data. This information is fundamental when tracing missing persons and establishing what has happened to them. Such searches are undertaken in places of detention, camps for internally displaced persons and refugees, hospitals, morgues, cemeteries and burial grounds and remote areas. Tracing activities include supplying the authorities with lists of people unaccounted for, together with information on the circumstances under which they disappeared, requesting information on the location of graves and asking the authorities to allow for the recovery and identification of human remains. Updated lists of missing persons that have been reported to ICRC in a given context can be published, widely distributed among authorities and the public at large and used by all who are engaged in the tracing process. The process also involves maintaining a constant dialogue and making confidential representations to the authorities or armed groups in order to clarify the fate of missing persons.

22. Following the end of hostilities, the international community made intensive efforts in this respect through the International Commission on Missing Persons in Bosnia and Herzegovina, Croatia, Montenegro, Serbia and the former Yugoslav Republic of Macedonia, as well as in Iraq and Colombia. The International Commission on Missing Persons has been assisting Governments in recovering and identifying persons missing since 1996. Other humanitarian organizations involved in activities linked to restoring family links are the Office of the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM). They are regular partners of the Red Cross and Red Crescent components. Other agencies, such as the United Nations Children's Fund (UNICEF) and non-governmental organizations such as Save the Children Fund, cooperate with the Red Cross and Red Crescent Movement in specific cases, for example, in assisting unaccompanied children.

23. It is to be noted that in 2008, in Baku, the Ministers of Internal Affairs of the countries members of the Commonwealth of Independent States signed an agreement for the purpose of implementing mutually beneficial cooperation and ensuring rapid response in the tracing of missing persons and the establishment of their whereabouts. Within the framework of the agreement, instructions for

organizing the inter-State tracing of missing persons were approved. The competent authorities of the Commonwealth of Independent States member countries are taking coordinated action pursuant to those instructions.

B. Mechanisms for clarifying the fate of missing persons

24. In order to be effective, tracing activities and efforts to locate and identify missing persons who are dead (that is, the vast majority of missing persons following violent conflicts today), the investigation of cases and the management of information require the establishment of mechanisms aimed at ensuring that parties face up to their obligations and provide the information needed to resolve cases of missing persons. In that regard, the General Assembly, in its resolution 63/183, recognized the need for the collection, protection and management of data on missing persons according to international and national legal norms and standards, and urged States to cooperate with each other and with other concerned actors working in that area, inter alia, by providing all relevant and appropriate information related to missing persons.

25. Such mechanisms, whose objectives include clarifying the fate of missing persons and supporting their families, already exist in some countries, including Argentina, Armenia, Azerbaijan, Colombia, Chile, Guatemala, Georgia, Iran (Islamic Republic of), Iraq, Japan and many others. However, the establishment of national information bureaux and grave registration services, as provided for in international humanitarian law, is recommended.

26. In Guatemala, ICRC pushed authorities for the creation of a national search committee, as outlined in a draft law that has been pending approval in Congress since 2007. The committee would be responsible for coordinating the Government's response on the issue, in cooperation with family associations and other civil society organizations, as well as for implementing a policy based on international standards to tend fully to the needs of affected families.

27. In 2004, Costa Rica created the Commission on International Humanitarian Law, with the objective of promoting peace and preventing conflict. Since March 2007, the issue of missing persons has been incorporated into the Commission's plan of action. The Commission plans to carry out an analysis of the existing legal framework with a view to proposing, in the medium-term, improved mechanisms to prevent persons from going missing, and to respond to potential cases of missing persons in the country.

28. The Missing Persons Institute was established in Bosnia and Herzegovina in 2005 on the basis of an international agreement between the International Commission on Missing Persons and the Government. Its purpose is to provide the country with a sustainable national mechanism to address all aspects related to the issue of missing persons resulting from the conflict in the former Yugoslavia. The Institute also ensures that mass grave sites are protected, catalogued and properly excavated and that relatives of the missing are able to participate in the search process. One of the major tasks of the Institute is also to establish a unified central record of those who went missing during the conflict. A central record office will include all records kept by entity agencies and institutions, associations of families of the missing and by the International Commission on Missing Persons, ICRC and other organizations. The central list will be subject to a rigorous verification process

to ensure its accuracy and prevent the manipulation for political purposes of the numbers of missing persons. The Institute will use the database developed by the International Commission on Missing Persons, which has become a model for other Governments, as the basis for the creation of its central records. Through assistance provided by the International Commission, over 15,500 persons have been identified in the western Balkans, of which over 13,000 are of relevance to Bosnia and Herzegovina. In this regard, 15 years following the cessation of hostilities, Bosnia and Herzegovina has accounted for over two thirds of those missing as a result of armed conflict, crimes against humanity and violations of human rights.

29. In 2006, with the assistance of the International Commission on Missing Persons, the Government of Kosovo created a Commission on Missing Persons, based upon the model of the Missing Persons Institute in Bosnia and Herzegovina. Its mandate is to search for persons missing as a result of the conflict, regardless of national, ethnic or religious origins. In Kosovo, the Working Group on Missing Persons, comprised of Belgrade and Pristina delegations, chaired by ICRC, meets regularly. The effort to locate and identify Kosovo's missing persons has been a complicated process and has been carried out primarily by the United Nations Interim Administration Mission in Kosovo (UNMIK) and now European Union Rule of Law Mission in Kosovo in cooperation with the International Commission on Missing Persons. To date 2,284 missing persons have been reliably identified in Kosovo using DNA.

30. In Cyprus, the Committee on Missing Persons launched its forensic recovery and identification activities in 2005 with advice from ICRC and, later, practical and technical assistance from the International Commission on Missing Persons. It has since exhumed the remains of more than 600 individuals from different burial sites located across the island and has identified more than 200 persons whose remains have been returned to the bereaved families. The Committee has set up a local and bicommunal team of experts, including forensic archaeologists, anthropologists and geneticists. They have developed a model of best practices for the recovery and identification of the missing persons and attention to the families. This bicommunal project is also a model for peacebuilding efforts in the island.

31. With regard to missing persons, Greece has established a working group which cooperates with a related group in Cyprus to contact the relatives of the families of the missing. Regarding the identification of remains, cooperation has been also established with the Cyprus Genetics Institute as well as with the non-governmental organization Physicians for Human Rights.

32. In the Middle East, the ICRC-chaired Tripartite Commission, which was established in 1991 to resolve the fate of missing persons in connection with the 1990-1991 Gulf War, regularly meets and works on gravesites and on the identification of human remains. Since 2003, it has resolved 304 cases of missing persons. The International Commission on Missing Persons has been providing technical assistance to Kuwait, Lebanon and Iraq, where it also implements a large-scale capacity-building programme.

33. In 2009, in relation to the war between the Islamic Republic of Iran and Iraq, (1980-1988), further steps were taken to implement a joint memorandum of understanding signed by both Governments in 2008, with ICRC acting as a neutral intermediary. Agreement was reached on the rules and procedures of two tripartite committees that have the respective tasks of resolving: (a) cases of former and

presumed prisoners of war still unaccounted for; and (b) cases of persons missing or killed in combat, including the recovery, identification and handover of human remains.

34. In Colombia, two particular mechanisms are in charge of coordinating the efforts to provide answers to the families of missing persons on the fate and whereabouts of their relatives, as well as to repair them for their loss: The National Commission on Missing Persons and the National Commission on Reparation and Reconciliation.

35. In Timor-Leste, ICRC continues to advocate and offer support for the establishment of a national mechanism to address the issue of missing persons, as recommended by the 2008 report of the Commission for Truth and Friendship. An Act that aims to provide a general framework on missing persons (Comarca Act) was drafted in early 2010. ICRC which was invited to contribute to the preparation of the Act, insisted, in particular, on taking into account the needs, interests and concerns of the families of missing persons and the importance of assigning to the envisaged mechanism an exclusively humanitarian mission. Moreover, ICRC has started discussing the issue of the missing persons with the competent authorities in Indonesia.

36. In Nepal, major initiatives envisaged in the peace agreement and interim constitution, including the establishment of a truth and reconciliation commission and a commission on missing persons, have yet to take shape. The International Commission on Missing Persons has provided advice on policy measures in that regard.

C. Missing persons and archives

37. The proper management and processing of information about missing persons also require the establishment and maintenance of a proper filing and archiving system that complies with standards for keeping personal data confidential. In that respect, ICRC is managing information and processing files on missing persons in many of the areas in which it operates. A standard software application adaptable to all contexts allows it to store, process and consult information on missing persons while ensuring a high level of data security and confidentiality of information. Iraq and Bosnia and Herzegovina and other countries have been implementing large data management systems provided by the International Commission on Missing Persons, whose systems include large-scale DNA-based identification tools.

38. In 2005, ICRC, as chair of the Working Group on Missing Persons in Kosovo, negotiated access to the archives of the international organizations that had worked or are still working in Kosovo, particularly those that might possess documentation related to gravesite locations and exhumations carried out in Kosovo directly after the conflict. Formal requests have also been forwarded to the Governments of countries whose military contingents operated in Kosovo within the International Security Force in Kosovo (KFOR). All retrieved information is being carefully processed and analysed in accordance with ICRC working modalities, which are based on confidentiality, and in close cooperation with the relevant national entities, in hopes that it might lead to the identification of more human remains, including potential graves.

39. In 2001 and 2002, the International Commission on Missing Persons, through an agreement with the Government of Serbia, provided assistance in the excavation of the mortal remains of persons forcibly disappeared from the Kosovo conflict in 1999. The Commission used DNA to identify the victims, confirming that they were all Kosovo Albanians executed in 1999. These mortal remains were repatriated to the families of the missing by 2006. In addition, the Commission has provided assistance to the United Nations Interim Administration in Kosovo, and, more recently, to the European Union Rule of Law Mission in Kosovo, in identifying missing persons from the conflict. In total, 2,301 persons have been accurately identified. The process has come to a standstill, however, and the Commission believes that identifications made prior to the use of DNA constitute an issue that needs to be seriously addressed, since potentially hundreds of mortal remains may have been misidentified in Kosovo, prior to its use. The Commission plans to release a stocktaking report on the issue that is crucial to the future of the missing persons process in Kosovo. In addition to its technical work, the Commission helped the Government of Kosovo to create the Government Commission on Missing Persons in 2006 and is working with the Government to increase the capacity of the Commission to carry out its work. The Commission works closely with a variety of family associations of the missing from both communities to find avenues for dialogue and promote joint activities to raise awareness of the issue. In 2009, the Commission sponsored a workshop through the Nansen Dialogue Centre, to prepare for its second meeting between family associations and Government authorities to ensure that families receive regular information, in line with their rights.

IV. The forensic recovery and identification of remains of missing persons

40. The General Assembly, in its resolution 63/183, while acknowledging the role of traditional forensic methods in searching and identifying missing persons, recognized the significant contribution of technological progress, in particular that of DNA forensic sciences in the identification process of missing persons.

41. In cases where missing persons are believed to be dead, the recovery, identification and dignified management of their bodies or remains are essential. International humanitarian law and, particularly following the end of hostilities, human rights law, requires that States and other parties to an armed conflict or other form of armed violence ensure proper and dignified burial and commemoration of the dead and that they help clarify the fate of missing persons. With respect to the management of human remains and information relating to the dead, measures proposed include: ensuring that all feasible measures are taken to identify the human remains and to record their identity; avoiding obstruction of, interference with or impediments to the identification of human remains; issuing death certificates; ensuring that all those involved respect the legal rules and professional ethics applicable to the management, exhumation and identification of human remains; ensuring that forensic specialists, whenever possible, carry out the procedures to exhume and identify human remains and assess the most appropriate methods for doing so, taking into account standards that have been developed by the International Criminal Police Organization (INTERPOL), the International Commission on Missing Persons and competent professional and scientific organizations such as the European Network of Forensic Science Institutes;

respecting and developing professional ethics and standards of practice for forensic specialists working in international contexts; and ensuring adequate training for all persons collecting information on the dead and handling human remains.

42. With regard to beginning a process of exhumation and identification, experts agreed that such a process should begin only once a framework has been agreed upon by all those concerned and that the framework should include:

(a) The establishment of protocols for exhumation, ante-mortem data collection, autopsies and identification based on scientifically valid and reliable methods and technologies and/or customary, clinical or circumstantial evidence that are deemed appropriate and that have been previously adopted by the scientific community;

(b) Appropriate means of associating the communities and the families in the exhumation, autopsy and identification procedures;

(c) Procedures for handing over the human remains to the family.

43. The International Commission on Missing Persons has been making such protocols available, including standard operating procedures to numerous countries. Guatemala provided information about the functioning of the National Institute of Forensic Sciences, which is responsible for carrying out technical investigations.

44. Some organizations stated that in many parts of the world, forensic aspects of investigating human rights violations were still not included in the process. Although the technological gap in the area of forensics has narrowed over the past two decades in some regions, the credibility of official forensic institutions often continues to be an issue of concern. Updating equipment, providing training and ensuring quality control and assurance, as well as cooperation with specialized international organizations, are crucial for improving results and credibility of the concerned institutions, and addressing the needs of bereaved families.

45. While there have been some improvements in this area, it remains critically important, albeit extremely difficult, to ensure that independent forensic investigations are carried out or that independent experts accompany forensic officials investigating human rights violations. Forensic investigations conducted solely by potentially unreliable experts or institutions that may have a conflict of interest relating to the crime under investigation often do not provide closure to families of victims or to society as a whole, resulting in requests for further investigations.

46. With regard to measures aimed at facilitating the right to truth for the families of victims, forensic investigators should assist such families whenever possible by:

(a) Providing basic information before, during and after the forensic work is conducted, informing them of the many possible outcomes of any given forensic investigation (such as the likelihood of locating or identifying remains) and the final results;

(b) Facilitating appropriate access to sites where investigations are being carried out, keeping in mind that viewing burial sites is a traumatic experience and (considering that the identity of victims is not yet established) can give rise to false expectations and unnecessary sufferance;

(c) Considering and addressing their concerns, doubts, questions and objections, taking into account their cultural, religious and funeral customs. If such issues are not taken into account before a forensic investigation has begun, the work may fail and lead to more suffering; and

(d) Encouraging reflection, discussion and democratic decision-making regarding missing persons at the level of society as a whole, and doing so beyond documenting their plight, in order to prevent the marginalization of victims, including the families of the missing, which reinforces feelings of victimhood and hence creates further obstacles to reconciliation and peacebuilding. The International Commission on Missing Persons has implemented extensive small grants programmes for associations of the families of the missing, inter alia, to reach out to society at large. It has also sponsored analytical and artistic expression on the issue by local artists within affected societies.

47. The training and promotion of local forensic experts is also an important issue. While international forensic teams assisting in the search for the missing and the disappeared resulting from wars, internal conflicts and repressive regimes have made a major contribution, it is also important that they do not limit their interventions to forensic investigation and analysis but also emphasize working with, training and promoting local teams and local forensic experts. This is essential for a variety of reasons, including:

(a) In most of the countries concerned, the forensic work of identifying victims of violations takes decades; international teams tend to spend only a limited amount of time on each mission, usually only for a few years, whereas national teams can be dedicated to such work over a longer period of time;

(b) In many of the countries concerned, forensic science is less developed or almost non-existent and, in most cases, archaeological, anthropological and genetic techniques are uncommon or not used at all; the use of physical evidence in court is, in general, limited, and most testimony is oral; and the creation of a national forensic team or the training of forensic professionals who can address the problem usually leads to a general improvement in criminal investigation procedures and, as a result, in the exercise of the rule of law;

(c) Effective local forensic capacity, including specialized forensic teams, may serve the families of the victims and their communities in more effective ways because they speak the language, are from the same or a similar culture, have often lived through comparable experiences and often have a strong commitment to improving the rule of law in their countries — they are also better positioned for regional cooperation;

(d) Immediately after the 2003 international conference of governmental and non-governmental experts on the missing and their families, ICRC established its own forensic services in order to promote and help support the implementation of the recommendations from the Conference related to forensic sciences and human remains.

48. In this regard ICRC has been actively involved in supporting local forensic capacity-building to investigate and prevent the missing from armed conflicts and disasters in several countries worldwide, including: Argentina, Armenia, Azerbaijan, Colombia, Cyprus, Chile, Georgia, Guatemala, Haiti, India, Lebanon, Iran (Islamic Republic of), Iraq, Kenya, Pakistan, Peru, the Russian Federation, South Africa and

Yemen. ICRC's forensic support ranged from technical advice and tailored training to provision of equipment and promotion of national and regional communication, coordination and cooperation among forensic services for improved prevention and investigation into the missing from armed conflicts.

49. In this view, for example, several seminars on the forensic expertise have been arranged in the Russian Federation for the professionals involved in the process of searching and identification of missing persons. Officials and forensic experts have also conducted visits to the International Commission on Missing Persons for technical advice.

50. The International Commission on Missing Persons has been conducting extensive training programmes in the areas of locating missing persons, exhumation, archaeological and anthropological examinations as well as applying DNA methodology to identifications. Kuwait, Iraq and Colombia are among the countries that have participated in these programmes. The Russian Federation has also drawn on the Commission's expertise.

51. It is also important to train and promote local legal and judiciary experts, including lawyers and judges, including law students, to address the complexities of the missing persons issue under domestic law. Whereas the International Commission on Missing Persons works closely with the local judiciary, both for purposes of locating and identifying the missing and facilitating justice, this is not yet a universally accepted principle. More work needs to be done to ensure that rule of law-based processes can go forward.

V. Missing persons and the issue of impunity

52. The General Assembly, in its resolution 63/83 reaffirmed that armed conflicts are continuing in various parts of the world, often resulting in serious violations of international humanitarian law and human rights law, and that the issue of persons reported missing in connection with international armed conflicts, in particular those who are victims of serious violations of international humanitarian law and human rights law, continues to have a negative impact on efforts to put an end to those conflicts and causes suffering to the families of victims of missing persons, and stressed the need to address the issue of missing persons as a part of peacebuilding processes, with reference to all justice and rule of law mechanisms, on the basis of transparency, accountability and public involvement and participation

53. The General Assembly welcomed, in particular, the assistance that the International Commission on Missing Persons has been extending to the International Tribunal for the Former Yugoslavia in numerous cases, including those concerning the fall of Srebrenica in 1995.

54. The Human Rights Council has discussed the right to the truth on various occasions, although in a broader context. In its resolution 12/12 of 1 October 2009, the Council reaffirmed the importance of respecting and ensuring the right to the truth so as to contribute to ending impunity and to promote and protect human rights. The Council noted that the right to the truth may be characterized differently in some legal systems as the right to know or the right to be informed or freedom of information.

55. In paragraph 11 of its resolution 63/183, the General Assembly stressed the need for addressing the issue of missing persons as part of peacebuilding processes, with reference to all justice and rule of law mechanisms, on the basis of transparency, accountability and public involvement and participation.

56. In the context of the peacekeeping operations in which the Spanish armed forces are currently participating, national contingents collaborate with States and intergovernmental and non-governmental organizations that request the support of the military in preventing the disappearance of persons during armed conflicts and in determining the whereabouts of persons reported missing. The Ministry of Defence supports the promotion and strengthening of the Peacebuilding Commission as a body that facilitates the smooth transition from a conflict to a peaceful situation. The question of missing persons should form part of peacebuilding agendas in view of its relevance for the restoration of justice and the rule of law.

57. The United Nations Office on Drugs and Crime, in the context of the fight against impunity and the strengthening of the rule of law, is working to assist Member States in reforming their criminal justice systems. Fair, humane and effective criminal justice systems, founded on full respect for the rule of law and human rights and guided by the United Nations standards and norms in crime prevention and criminal justice, are the basis on which the Office builds its response to threats emanating from drugs, organized crime, terrorism and corruption.

58. The United Nations Office on Drugs and Crime therefore assists States, particularly developing countries, countries emerging from conflict and countries with economies in transition, in developing strategies to prevent crime and to build the capacity of their justice systems to operate more effectively within the framework of the rule of law, with a particular attention to vulnerable groups. In countries emerging from conflict, the strengthening of the criminal justice system contributes to promoting public trust and ending impunity.

VI. Conclusions and recommendations

59. It is essential that States adopt measures to prevent persons from going missing, establish the right to know, develop forensic science capacity and counter impunity.

60. The problem of missing persons is particularly severe in the context of armed conflict and its aftermath. States should actively engage in a process to minimize the phenomenon, including by establishing adequate processes to locate, identify and repatriate the missing to their families. The issue should also be addressed as part of peacebuilding processes, with reference to all justice and rule of law mechanisms, including the judiciary, parliamentary commissions and truth-seeking mechanisms, on the basis of transparency, accountability and public involvement and participation.

61. The right of families to know the fate of missing persons should be respected at all times.

62. With regard to forensic sciences, there should be support for forensic work as a component of the investigation of human rights violations. Access to independent forensic investigations of violations of human rights and humanitarian law should

also be improved. Enhanced contacts should be established between independent forensic experts and local judiciaries, prosecutors, judges and lawyers. The need for training and promoting local teams and local forensic experts should also be recognized. Local forensic capacity-building is often essential for ensuring credible and sustainable investigations into cases of missing persons. In that context, regional initiatives could be helpful in improving independence and efficiency in the application of forensic sciences to the investigation of the missing.

63. It is essential that there be accountability for violations of human rights, including enforced disappearances. In that context, States are called upon to ratify relevant international treaties, in particular the International Convention for the Protection of All Persons from Enforced Disappearance. States are also called upon to bring their domestic laws and practices into conformity with that Convention.

64. International cooperation to locate, identify and repatriate persons missing as a result of violent conflict and human rights violations should be strengthened through organizations such as the International Commission on Missing Persons, which provide advanced technical assistance and policy frameworks responding to the obligations of Governments in this regard, and through associations of victims' families, such as the International Federation of Family Associations of Missing Persons from Armed Conflicts which is an international federation of the families of the missing from armed conflicts that works globally on behalf of the families to address and help to resolve the multi-faceted issues of missing persons and their surviving families post-conflict. These bodies have a major role to play in international cooperation on the issue of missing persons.